

3

DAVID P. CUSICK, #160467 TRUSTEE  
NEIL ENMARK, #159185, attorney for Trustee  
TALVINDER S. BAMBHRA, #230907, attorney for Trustee  
P.O. Box 1858  
Sacramento, California 95812-1858  
[legalmail@cusick13.com](mailto:legalmail@cusick13.com)  
(916) 856-8000

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

IN RE:	)	Case No: 18-26373-E-13C
	)	DCN: JHH-1
	)	
HERBERT EDWARD MILLER)		TRUSTEE'S RESPONSE TO DEBTOR'S
	)	MOTION TO RECONSIDER ORDER
	)	DISMISSING CASE
	)	
	)	DATE: FEBRUARY 12, 2019
	)	TIME: 3:00 P.M.
	)	JUDGE: SARGIS
<u>Debtor(s)</u>	)	COURTROOM: 33

DAVID P. CUSICK, TRUSTEE, responds to Debtor's MOTION TO RECONSIDER  
ORDER DISMISSING CASE:

1. **CASE STATUS.** It appears the case was dismissed for failing to comply with the  
Court's Order on Extension of Time to File Required Documents (DN 16).

The Debtor's case was filed on October 9, 2018, as an incomplete filing. The Debtor  
initially filed the Voluntary Petition (DN 1) and Statement of Social Security Numbers (DN 4).

1 On October 9, 2018, the Court issued the deadline to file the Verification and Master Address  
2 List of October 16, 2018 and a deadline to file the remaining documents of October 23, 2018  
3 (DN 1).

4 On October 16, 2018, the Debtor filed Master Address List (DN 9).

5 October 23, 2018, he filed an Application to Extend Time (DN 11), and also filed Form  
6 122C-1 (DN 10), Summary of Schedules/Assets & Liabilities, Schedules A/B, C and Statement  
7 of Financial Affairs (DN 13). And on October 24, 2018, the Debtor filed Schedule C, D, E/F, G,  
8 H, I, J (DN 14) and the Plan (DN 15). It appears that all required documents are on file as of  
9 October 24, 2019.

10 On October 25, 2019, the Court issued Order on Extension of Deadline to File Missing  
11 Documents (DN 16), granting the Debtor until November 6, 2018 to file the required missing  
12 documents and giving the Debtor notice that he is responsible to give timely notice of  
13 commencement of the case, and of all deadlines, to all creditors not included on the original  
14 master address list. The Debtor was given 5 days from the date he filed all documents, to file a  
15 Proof of Service showing that all creditors were served the said notice. The notice also advised  
16 the Debtor he is responsible to serve the Chapter 13 plan with a motion to confirm and notice of  
17 hearing. The Debtor's final documents were filed on October 24, 2018, giving the Debtor until  
18 October 29, 2018 to file evidence of service of the

19 It appears the Debtor added Placer Recovery Specialists, (DN 14, Pg. 10) and changed  
20 the address of two creditors; Countrywide Bank to PO Box 650070, Dallas, TX 75265 and  
21 Michael Smith to 2705 Boothill Ct, Laguna Hills, CA 92653. The Debtor has not filed a proof  
22 of service giving notice that he has complied with the order and served all parties a copy of the  
23 plan and there is not a motion to confirm set.  
24

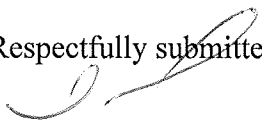
1           2. **ELIGIBILITY**. The Trustee notes that Debtor's secured claims on Schedule D total  
2 \$9,919,447.28, (DN 14, Pages 9), which far exceeds the debt limit allowance in a Chapter 13 as  
3 set forth in 11 U.S.C. §109(e.) While Debtor may argue these claims are disputed, (Summary of  
4 Schedules, DN 13, Page 1), disputed debts count towards eligibility, (Nicholes v. Johnny  
5 Appleseed of Washington (In re Nicholes), 184 B.R. 82, 90-91 (9th Cir. BAP 1995))

6           Even if the Court finds cause to reconsider the order, the Debtor does not appear eligible  
7 to Chapter 13.

8           WHEREFORE, Trustee requests that matter be considered.

9  
10  
11 DATED: JANUARY 23, 2019

Respectfully submitted,

  
NEIL ENMARK, Attorney for Trustee